IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.239 OF 2007

M/s.Poddar Synthetics .. Petitioner.
Versus
M/s.Prakash Trading Co. .. Respondent.

Mr.Pathak for petitioner.
Mr.Lalit Jain for respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 18th October, 2007.

P.C.:

1. This Arbitration Petition challenges the Award dated 2nd September, 2006, passed by the Hindustan Chambers of Commerce, Mumbai. The learned Advocate appearing for the petitioner urges that the Award is liable to be set aside by this Court under Section 34(2)(iii) inasmuch as the petitioner did not have notice of the arbitral proceedings at all. It is urged that the petitioner received the copy of the Award prior to the filing of this petition. The petitioner was not served with any notice calling upon him to remain present when the Tribunal was taking up the claim of the respondent for adjudication. In such circumstances, the Award is liable to be set aside.

2. While not disputing the address for communication and despatch of notice, the learned Advocate appearing for the petitioner submits that Bara Bazar, Post Darbhanga,

Bihar is a market area. The petitioner is a proprietary concern of Mr.Pawan Kumar K. Poddar. The petitioner carries on business in the name of Poddar Synthetics. There is another concern, operating in the same market area in the name of M/s.Poddar Traders. The said Poddar Traders and the petitioner have an on going dispute and it is quite likely that the notice must have been accepted by the said Poddar Traders.

3. All these contentions are refuted by Mr.Jain. He relies upon the compilation tendered in this Court and taken on file. He submits that each of the notices from the Arbitral Tribunal are specific. The petitioner was called upon to remain present when the claim was taken up for adjudication on the date and time specified in the notice. The notice was sent by R.P.A.D. and in the name of Poddar Synthetics and he relies upon the acknowledgement and submits that the argument canvassed before me is nothing but an after thought to defeat the claim of the respondent.

4. After perusing the petition and the compilation so also the reply affidavit, I brought to the notice of the learned Advocate, appearing for the petitioner, some of the acknowledgement cards and he stated that the signature

on the same is of one Ramchandra Prasad, who is neither familiar to the petitioner nor an employee. I also brought to his notice the fact that the address of the petitioner is correctly mentioned. He doesn't dispute that aspect of the matter. In such circumstances and purely as a matter of concession, if the Award is to be set aside and fresh opportunity afforded to the petitioner, I enquired from the learned Advocate for the petitioner whether the petitioner is willing to deposit 50% of the Award amount without prejudice to his rights and contentions in this Court. The learned Advocate agreed to do so, provided some time frame is fixed for appearance and fresh adjudication by the tribunal.

5. Considering the statement made by the petitioner's Advocate so also taking into account the fact that such without prejudice deposit subserves the interest of justice, in my view, one last opportunity deserves to be granted to the petitioner. The same is granted in the peculiar facts of this case and subject to compliance with the statement recorded above. Accordingly, the petition is disposed of by the following order and directions : -

> "On petitioner depositing in Court a sum of Rs.3,50,000/- (Rupees Three lacs fifty

> thousand only) within a period of six weeks from today, the Award to stand quashed and set aside. Thereupon, Hindustan Chambers & Commerce (Arbitral Tribunal) to take up the claim of the 1st respondent for adjudication afresh and render its Award thereon within a period of six months from the date of first appearance, after such deposit."

6. The learned Advocate appearing for the petitioner to intimate to the respondent or his Advocate about the deposit. He should also give the Arbitral Tribunal, an intimation in that behalf. It is only after the said deposit and intimation that the Arbitral Tribunal shall adjudicate upon the reference afresh.

7. In that event, all contentions of both parties are kept open and they shall be available for being urged on the merits of the controversy. No opinion is expressed in that behalf by this Court.

8. Needless to state that if the amount is not deposited as stipulated above, the arbitration petition to stand dismissed without any further reference to the

Court. Thereupon, the Award remains uninterfered with and it would be open for the respondent to execute the same in accordance with law.

9. The learned Advocate makes a statement that the petitioner is a proprietary concern, carrying on business from Bara Bazar, Darbhanga, in the State of Bihar and all communications, notices and processes be served at this address and it would be accepted by the petitioner or his constituted attorney Kishor Kumar Poddar or his wife Kiran. He will not dispute the authority of either of these persons and would not raise any issue pertaining to lack of notice in the proceedings.

10. Arbitration petition is accordingly disposed of in the above terms.

(S.C.Dharmadhikari, J.)